IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATIONS NO. 11, 12 AND 13 OF 2005.

CRIMINAL MISC. APPLICATION NO. 11/2005.

Mr. Balaji Mahadev Bondar,
son of Mahadev Bondar,
aged 30 years, married,
businessman, resident of
Kalam, Usmanabad, Mahashtra. ... Applicant.

VERSUS

1. State of Goa,
through Public Prosecutor,
Panaji, Goa.

2. The Police Inspector,
Ponda Police Station,
Ponda, Goa. .... Respondents.

CRIMINAL MISC. APPLICATION NO. 12 OF 2005.

Mr. Dynaneshwar Manaji Kendre,
son of Manaji Kendre,
aged 29 years, married,
agriculturist, reisdent of
Kinwat, Nanded, Maharashtra. .... Applicant.

Versus

1. State of Goa,
through Public Prosecutor,
Panaji, Goa.

2. The Police Inspector,
Ponda, Goa. .... Respondents.

CRIMINAL MISC. APPLICATION NO. 13 OF 2005.

Mr. Vikram Maruti Mirgani,
son of Maruti Mirgani,
major, unmarried, student,
resident of Kalam,
Osmanabad, Maharashtra. .... Applicant.

Versus

1. The State of Goa,
through Public Prosecutor,
Panaji, Goa.

2. The Police Inspector,
Ponda Police Station,
Ponda, Goa. .... Respondents.

Shri S. Nayak, Advocate for the Applicants.

Ms. W. Coutinho, Additional Public Prosecutor for the Respondents.

CORAM: N. A. BRITTO, J.

DATE: 17th February, 2005.

O R D E R:

The applicants who are accused in Crime No. 20/05 of Ponda Police Station were ordered to be released on bail after Court hours on 14.2.05. It is necessary to give reasons in support of the said Order dated 14.2.05.

2. The applicants were arrested on 22.1.05. The said Crime came to be

registered against them upon a first information filed by Smt. Sulochana J. Mahalekar on the allegation that on 22.1.05 at about 16.15 hrs. the said applicants/accused in furtherance of common intention assaulted her and her son Jitendra, Virendra, son-in-law Manoj Fatrekar and a neighbour by name Ravi Kumar with fist blows, kicks and a wooden danda and abused them with filthy language and also gave threats of dire consequences. It was stated that the said Manoj Fatrekar sustained grievous injuries and was admitted in G.M.C., Bambolim and others had suffered simple injuries. The said Crime was registered under Sections 326, 504, 506(ii) r/w Section 34 I.P.C.

3. The first bail application filed by the said accused was rejected by the learned J.M.F.C., Ponda on 23.1.05 and the second application was rejected on 29.1.05. The first bail application filed by the accused before the Sessions Court, Panaji, was rejected on 27.1.05 and the second bail application was rejected by the Sessions Court on 3.2.05.

4. Admittedly, the incident took place in the office of one Dinkar K. Patil at St. Cruz, Ponda. Apparently the said Jeetendra Mahalekar and Ravi Kumar had some business dealings with the accused Dinkar Patil over payment of money and a truck bearing No. GA-O1/W-6318 along with keys belonging to the said Ravi Kumar was taken in possession by the said

Dinkar Patil. According to the first informant, the said Dinkar Patil had called her son Jeetendra to his office for the settlement of dispute and as a result she had gone there along with Jeetendra, Virendra, Davendra, Vinod, Gaurish, Manoj and Ravi Kumar. According to the accused it is the said Ravi Kumar who came with the said first informant and 15 to 20 boys and trespassed into the office of the said Dinkar Patil and demanded the keys of the truck and also a letter dated 19.1.05 and as they did not know about it, they asked the said Ravi Kumar to ask the said Dinkar Patil for the same. According to the accused the other persons who accompanied the first informant Smt. Sulochana and Ravi Kumar, were supporters of the M.L.A. from Ponda who started causing damage to the office of the said Dinkar Patil and also assaulted them. According to the first informant when she went to the office of the said accused Dinkar Patil, only the said Ravi Kumar, Manoj and Devendra went inside the office for talks when she noticed that the said Patil and other 3 persons who were present inside the office started assaulting the said Ravi, Manoj and Devendra with danda, fist blows and kicks, etc.

5. The learned Sessions Judge has come to the conclusion that the accused was involved in committing serious offence and the investigations were still in progress. Initially the crime was registered under Sections 326, 504, 506(ii) r/w 34 I.P.C. Assuming for a moment that the said

Manoj Fatrekar was assaulted with the danda, prima facie, he would have been guilty of causing grievous hurt punishable under S.325 I.P.C. which offence is bailable. The only offence which was said to be non-bailable is under S.506(ii) and if that is the case the learned Sessions Judge was certainly not justified in rejecting the bail applications filed by the accused on the ground that the offences were serious in nature. The learned Sessions Judge dismissed the applications for bail filed by the accused on the ground that there was no material change in the circumstances since the date of her previous Order on 27.1.05. However, it appears that by 3.2.05 the accused were remanded to judicial custody as their presence in police custody was not required and not only that, even the said Manoj Fatrekar who was admitted in G.M.C. On 22.1.05 was discharged from the hospital. on 28.1.05

6. On behalf of the accused serious allegation has been made against P.S.I. Shri V.B. Veluskar that he misled the Court of J.M.F.C., Ponda on 29.1.05 after the discharge of the said injured Manoj Fatrekar that he was still undergoing medical treatment when, in fact, he was already discharged from the hospital. Another allegation which has been made against him is that after the discharge of the said Manoj Fatrekar on 28.1.05 that P.S.I. Veluskar added Section 307 I.P.C. and this was done for extraneous reasons, which have been mentioned on behalf of the accused. In fact the

learned Sessions Judge (in B.A. No.42/05) had taken note of the fact that the statement that the injured Manoj was still in the hospital was incorrectly and too casually made without verifying the records but ignored the same in B.A. Nos. 43, 44 and 45 of 2005.

7. In my view the fact that P.S.I. Veluskar added Section 307 I.P.C. after the injured Manoj was discharged from hospital would prima facie show that it was done only with a view to deny bail to the accused.

8. In the facts and circumstances stated hereinabove, the accused ought to have been admitted to bail firstly because the offences initially alleged against the accused were not serious and only an offence under S.506(ii) was non-bailable and the presence of the accused was certainly not required either in police or judicial custody for the purpose of investigation of the said offence. Therefore, the accused were ordered to be released on bail after Court hours on 14.2.05.

9. Although the accused filed bail applications for the second time before the learned Sessions Judge on 31.1.05 they were decided only on 3.2.05 and I am informed by learned Advocate Shri Nayak that they were disposed of at 5 p.m., as a result of which no application for certified copy could be made by him because the office would not accept the fees

for certified copies after 5.00 p.m. Shri Nayak has submitted that therefore he made the application for certified copy on 4.2.05. Although these applications were filed before this Court on 8.2.05 and when they were taken up for hearing on 10.2.05 it was represented both by learned Advocate Shri Nayak on behalf of the accused and learned Addl. P.P. Ms. Coutinho that copy of the Order of the learned Sessions Judge dated 3.2.05 was not ready and was not issued to them. Shri Nayak was able to file a certified copy of the said Order of the learned Sessions Judge only on 11.2.05. The certified copy shows that it was ready and delivered on 10.2.05. It is but obvious that the learned Sessions Judge took ten days to decide the bail applications and give copy of the Order passed by her. In the case of **Shri Khemlo Sakharam Sawant v. State (2001 (2) Goa L.T.. 111),** this Court had observed that delay of about five days in disposing bail applications was inappropriate because the matter concerns liberty of citizens. Again this Court in Cr.M.A. No. 206/04 by Order dated 24.9.04 had required the judicial officers to scrupulously follow the provisions found in the Criminal Manual as regards issue of certified copies. There are also circulars issued by the High Court which require Judicial Officers not to pronounce judgments unless they are ready in all respects. However, the learned Sessions Judge appears not to have taken note of the aforesaid observations/requirements. There is no explanation as to why the Order was pronounced on 3.2.05 if it was not

ready in all respects and in case it was ready why issuing copy of the same had to be delayed until 10.2.05. By delaying the giving of certified copy to the accused, the accused have been denied of their right to approach this Court promptly to obtain bail orders.

10. A copy of this Order be sent to the learned Sessions Judge, Panaji, to ensure that such lapses are not repeated in future.

N. A. BRITTO, J.

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